

COST SHARING AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY
AND

THE STATE OF LOUISIANA

FOR CONSTRUCTION, OPERATION, MAINTENANCE, REPAIR, REPLACEMENT,
REHABILITATION AND MONITORING OF THE

[FULL NAME OF PROJECT] PROJECT
[PARISH NAME] PARISH, LOUISIANA

THIS AGREEMENT is entered into this _____ day of _____, 20 __, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), acting by and through the Assistant Secretary of the Army (Civil Works) and the STATE OF LOUISIANA, (hereinafter referred to as the "State"), acting by and through the Secretary of the Louisiana Department of Natural Resources.

WITNESSETH, THAT:

WHEREAS, construction of the **[FULL NAME OF PROJECT]** Project in **[PARISH NAME]** Parish, Louisiana, (hereinafter referred to as the "Project" and defined in Article I.b. of this Agreement), is authorized by Section 303(a) of Title III, Pub. L. 101-646, the "Coastal Wetlands Planning, Protection and Restoration Act" enacted on November 29, 1990, as amended, (hereinafter referred to as the "CWPPRA"); and

WHEREAS, the Project was authorized by the Louisiana Coastal Wetlands Conservation and Restoration Plan of the State of Louisiana on **[DATE ON THE COVER OF STATE'S ANNUAL REPORT WHICH LISTS THE SPECIFIC PROJECT]**; and

WHEREAS, the Government and the State desire to enter into a Cost Sharing Agreement for construction, operation, maintenance, repair, replacement, rehabilitation, and monitoring of the Project; and

WHEREAS, Section 303(f) of the CWPPRA, as amended, specifies the cost-sharing requirements applicable to the Project; and

WHEREAS, in accordance with Section 304 of the CWPPRA, as amended, the Louisiana Coastal Wetlands Conservation Plan was approved by the Secretary of the Army, the Director of the

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U.S. Fish and Wildlife Service, and the Administrator of the Environmental Protection Agency on November 21, 1997, effective December 1, 1997; and

[USE OPTION I FOR PROJECTS APPROVED IN PRIORITY PROJECT LISTS (PPLs) 5 AND 6 AND USE OPTION II FOR PROJECTS APPROVED IN PRIORITY PROJECT LIST 8]

OPTION I

WHEREAS, Section 303(f) of the CWPPRA, as amended by Section 532 of Title II, Pub. L. 104-303 of the "Water Resources Development Act of 1996", specifies that, upon approval of the Louisiana Coastal Wetlands Conservation Plan, the Federal share for this Project will increase from 75 percent to 90 percent. In accordance with the unanimous decision of the Louisiana Coastal Wetlands Conservation and Restoration Task Force, which decision was officially rendered on January 16, 1998, the increased Federal share shall apply to all funds expended for this project; and

WHEREAS, Section 303(f)(2) of the CWPPRA, as amended, provides that in the event that the Secretary of the Army, the Director of the United States Fish and Wildlife Service and the Administrator of the Environmental Protection Agency jointly determine that the State is not taking reasonable steps to implement and administer the Louisiana Coastal Wetlands Conservation Plan, amounts made available by the Government in accordance with Section 306 of the CWPPRA, as amended, for any coastal wetlands restoration project shall revert from 90 percent to 75 percent of the cost of the project; provided however, that such reversion to the lower cost share level shall not occur until the Governor of the State of Louisiana has been provided notice of, and opportunity for hearing on, any such determination by the Secretary, the Director and the Administrator, and the State has been given ninety days from the later of such notice or hearing to take corrective action. The decreased Federal share shall apply and extend solely to those funds expended on or after such ninety-day period has elapsed without corrective action having been taken by the State; and

OPTION II

WHEREAS, Section 303(f) of the CWPPRA, specifies that, upon approval of the Louisiana Coastal Wetlands Conservation Plan, the Federal share for this Project will increase from 75 percent to 85 percent. In accordance with the unanimous decision of the Louisiana Coastal Wetlands Conservation and Restoration Task Force, which decision was officially rendered on January 16, 1998, the increased Federal share shall apply to all project funds expended on or after December 1, 1997; and

WHEREAS, Section 303(f)(2) of the CWPPRA, as amended, provides that in the event that the Secretary of the Army, the Director of the United States Fish and Wildlife Service and

1 the Administrator of the Environmental Protection Agency jointly determine that the State is not taking
2 reasonable steps to implement and administer the Louisiana Coastal Wetlands Conservation Plan,
3 amounts made available by the Government in accordance with Section 306 of the CWPPRA, as
4 amended, for any coastal wetlands restoration project shall revert from 85 percent to 75 percent of the
5 cost of the project; provided however, that such reversion to the lower cost share level shall not occur
6 until the Governor of the State of Louisiana has been provided notice of, and opportunity for hearing on,
7 any such determination by the Secretary, the Director and the Administrator, and the State has been
8 given ninety days from the later of such notice or hearing to take corrective action. The decreased
9 Federal share shall apply and extend solely to those funds expended on or after such ninety-day period
10 has elapsed without corrective action having been taken by the State; and
11

12 **[END OF OPTIONS]**
13

14 WHEREAS, Section 303(e) of the CWPPRA, as amended, states that the Secretary of the
15 Army "shall not fund a coastal wetlands restoration project unless that Project is subject to such terms
16 and conditions as necessary to ensure that wetlands restored, enhanced, or managed through that
17 project will be administered for the long-term conservation of such lands and waters and dependent fish
18 and wildlife populations;" and
19

20 WHEREAS, the Government and the State have the legal authority and capability to perform as
21 hereinafter set forth and intend to cooperate in the cost-sharing and financing of the construction,
22 operation, maintenance, repair, replacement, rehabilitation and monitoring of the Project in accordance
23 with the terms of this Agreement.
24

25 NOW, THEREFORE, the Government and the State agree as follows:
26
27

28 **ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS**
29

30 For the purposes of this Agreement:
31

32 a. The definitions in Section 302 of the CWPPRA, as amended, are incorporated herein by
33 reference.
34

35 b. The term "Project" shall mean the implementation, including the engineering, design,
36 construction, operation, maintenance, repair, replacement, rehabilitation, and monitoring of the **[FULL**
37 **NAME OF PROJECT]** Project, located **[GENERAL LOCATION OF THE PROJECT]** in
38 **[PARISH NAME]** Parish, Louisiana. The Project consists of **[BRIEFLY DESCRIBE THE**
39 **PROJECT TO BE CONSTRUCTED IN TERMS OF ITS BASIC AUTHORIZATION,**
40 **PURPOSE, AND MAJOR FEATURES, INCLUDING O&M AND MONITORING]**, as
41 generally described in the CWPPRA Task Force Priority Project

1 List Report, dated **[DATE ON THE COVER OF THE PRIORITY PROJECT LIST REPORT**
2 **WHICH DESCRIBES THE SPECIFIC PROJECT]**, as amended by later decisions of the Task
3 Force.
4

5 c. The term "total first costs" shall mean all costs incurred by the State and the Government
6 directly related to pre-construction monitoring, construction, and construction monitoring of the Project.
7 Such costs shall include, but not necessarily be limited to: all engineering and design costs incurred after
8 **[APPROVAL DATE BY THE CWPPRA TASK FORCE FOR THE PRIORITY PROJECT**
9 **LIST WHICH DESCRIBES THE SPECIFIC PROJECT]**; all preconstruction engineering and
10 design costs; engineering and design costs during construction; actual construction costs; construction
11 management costs; supervision and administration costs; costs of participation in the Project
12 Coordination Team in accordance with Article V of this Agreement; costs of audit in accordance with
13 Article IX of this Agreement completed prior to the final accounting of total first costs as identified in
14 Article VI.d.; costs of contract dispute settlements or awards; legal costs, awards, damages or
15 settlements associated with any dispute or litigation over reclamation rights; the value of lands, the value
16 of easements, the value of servitudes, the value of severance fees for dredging State waterbottoms, and
17 the value of rights-of-way, including the value of suitable borrow and dredged or excavated material
18 disposal areas acquired by the Government or acquired by the State for which the Government affords
19 credit in accordance with Article IV of this Agreement, all as may be required for the construction,
20 operation and maintenance of the project; the value of utility and facility relocations, as may be required
21 for the construction, operation, and maintenance of the Project; the cost of investigations to identify the
22 existence of hazardous substances as identified in Article XVI.a.; the cost of clean-up and response of
23 hazardous substances regulated under CERCLA (when the Government and the State mutually agree to
24 initiate or continue construction after discovery of such substances) for all lands other than those owned,
25 controlled and/or claimed by the State or fee-owned by the Government as identified in Art. XVI.c; the
26 cost of developing the Project Monitoring Plan, described in subparagraph o. of this Article; the cost of
27 developing the Project Operations and Schedule Manual, as described in subparagraph p. of this
28 Article; and the cost of cultural resource surveys, documentation and coordination. The term "total first
29 costs" shall not include the costs for operation, maintenance, repair, replacement, rehabilitation; post-
30 construction monitoring; and costs of dispute resolution identified in Article VII; and costs of audit in
31 accordance with Article IX of this Agreement completed subsequent to the final accounting of total first
32 costs as identified in Article VI.d.; and any increase in costs for betterments. The term "total first costs"
33 also includes the amount of work-in-kind credits, verified by Government audits, that will be given to the
34 State for work-in-kind.
35

36 d. The term "total project cost" shall mean all cost directly related to implementation of the
37 Project. Such cost shall include total first costs and all costs directly related to operation, maintenance,
38 repair, replacement, and rehabilitation of the Project, including post-construction monitoring and
39 associated supervision and administration costs, but shall not include any costs for disputes as identified
40 in Article VII.
41

42 e. The term "District Engineer" shall mean the U.S. Army District Engineer for the New Orleans
43 District, or his designee.
44

1 f. The term "period of construction" shall mean the time from the advertisement of the first
2 construction contract to the time the District Engineer certifies in writing to the State that construction of
3 the Project is complete. The District Engineer shall furnish to the State copies of the Government's
4 Written Notice of Acceptance of Completed Work furnished to contractor(s) for all contracts for the
5 Project.

6
7 g. The term "highway" shall mean any highway, thoroughfare, roadway, street, or other public
8 road or way.

9
10 h. The term "relocations" shall mean the preparation of plans and specifications for, and the
11 accomplishment of all, alterations, modifications, lowering or raising in place, and/or new construction
12 related to, but not limited to, existing: railroads, highways, and other bridges, buildings, pipelines, public
13 utilities (such as municipal water and sanitary sewer lines, telephone lines, and storm drains), aerial
14 utilities, cemeteries, and other facilities, structures, and improvements determined by the Government to
15 be necessary for the construction, operation and maintenance of the Project.

16
17 i. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal
18 year begins on October 1 and ends on September 30.

19
20 j. The term "functional portion of the Project" shall mean the completion of the construction of a
21 portion of the Project as determined by the District Engineer in writing to be suitable for tender to the
22 State to operate and maintain in advance of completion of the construction of the entire Project. To be
23 suitable for tender, the District Engineer must determine that the portion of the Project for which
24 construction has been completed can function independently and for a useful purpose, although the
25 balance of the Project is not complete.

26
27 k. The term "betterment" shall mean the design and construction of a Project feature
28 accomplished on behalf of, or at the request of the State in accordance with standards which exceed the
29 standards which the Government would otherwise apply for accomplishing the design and construction
30 of the Project.

31
32 l. The term "construction management costs" shall mean costs incurred by the State and the
33 Government directly related to supervising and administering of construction contracts, to include related
34 overhead costs, as specified in applicable Government contracting regulations.

35
36 m. The term "operation, maintenance, repair, replacement and rehabilitation" shall mean any
37 physical activity associated with the actual operation, maintenance, repair, replacement or rehabilitation
38 of the completed Project, or functional portion of the Project, which has been tendered to the State, as
39 described in the Project Operations and Schedule Manual as described in subparagraph p. of this
40 Article and Article VIII of this Agreement.

41
42 n. The term "monitoring" shall mean the pre-construction, construction, and post-construction
43 activities undertaken pursuant to the Project Monitoring Plan.

1 o. The term "Project Monitoring Plan" shall mean a specific plan prepared by the State, and
2 mutually agreed to by the State and the Government, to provide direction and guidance concerning all
3 monitoring requirements, parameters and procedures for the Project, which shall include the
4 procurement of aerial photographs of the Project area taken within one year prior to the
5 commencement of construction of the Project.

6
7 p. The term "Project Operations and Schedule Manual" shall mean a specific plan and schedule
8 prepared by the Government, and mutually agreed to by the State and the Government, to provide
9 direction and guidance concerning all operation, maintenance, repair, replacement and rehabilitation
10 activities for the Project or functional portion of the Project in accordance with Article VIII of this
11 Agreement.

12
13 q. The term "work-in-kind" shall mean engineering, design, pre-construction and/or
14 construction monitoring, and/or construction of the Project or feature of the Project which has been
15 approved in advance by the Government and is performed by the State.

16
17 r. The term "life of the Project" shall mean 20 years from completion of construction of the
18 Project or functional portion of the Project unless otherwise mutually agreed in writing.

19
20 s. The term "non-Federal proportionate share" shall mean the ratio of the State's total cash
21 contribution required in accordance with Article II.e. of this Agreement to total financial obligations for
22 construction, as projected by the Government.

23
24 t. The term "Project Management Plan" shall mean the written, approved document designed to
25 guide both project execution and project control through completion of the fiscal closeout. The plan will
26 clearly identify the project scope, cost, and schedule baselines. The plan may be summary or detailed.

27
28 u. The term "completion of the Project" shall mean the end of the Project life as defined in
29 Article 1.r. above, i.e. through the post-construction monitoring, operation, maintenance, repair,
30 replacement, rehabilitation of the Project.

31 32 33 **ARTICLE II - OBLIGATIONS OF THE PARTIES**

34
35 a. The Government, subject to receiving funds appropriated by the Congress of the United
36 States and using funds provided by the State, shall expeditiously construct the Project applying those
37 procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and
38 policies. The State shall be afforded the opportunity to review and comment on all contracts, including
39 relevant plans and specifications, prior to the issuance of invitations for bids. Before initial construction
40 of the Project can proceed, the State must concur in writing with issuance of the invitation for bids for
41 the first construction contract. The State will be afforded the opportunity to review and comment on all
42 modifications and change orders prior to the issuance to the contractor of a Notice to Proceed. In
43 those cases where providing notice to the State of the required contract modifications or change orders
44 is not possible prior to issuance of Notice to Proceed, such notification will be provided after the fact at

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1 the earliest date possible. The District Engineer will, in good faith, consider the comments of the State,
2 but award of contracts, modifications or change orders, and performance of all work on the Project
3 (whether the work is performed under contract or by Government personnel), shall be exclusively within
4 the control of the District Engineer provided such contracts, modifications and change orders are in
5 accordance with the Project purposes.

6
7 b. The State may request the Government to accomplish betterments. Such requests shall be in
8 writing and shall describe the betterments requested to be accomplished. If the Government, in its sole
9 discretion, elects to accomplish the requested betterments or any portion thereof, it shall so notify the
10 State in a writing that sets forth any applicable terms and conditions, which must be consistent with this
11 Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall
12 control. If the State accepts the terms and conditions, including estimated costs, the Government shall
13 proceed to accomplish the requested betterments. The State shall be solely responsible for all costs due
14 to the requested betterments and shall pay all such costs in accordance with Article VI.c. of this
15 Agreement.

16
17 c. After the District Engineer determines that construction of the Project, or functional portion
18 of the Project, is complete, and notifies the State in writing of such determination, the District Engineer
19 shall turn the Project or functional portion of the Project over to the State, which shall accept the
20 Project, or functional portion of the Project, and be responsible for operating, maintaining, repairing,
21 replacing, rehabilitating and monitoring the Project or functional portion of the Project in accordance
22 with the Project Operations and Schedule Manual, the Project Monitoring Plan, and Article VIII hereof,
23 to ensure that wetlands restored, enhanced or managed through the Project will be administered for the
24 long-term conservation of such lands and waters and dependent fish and wildlife populations.

25
26 **[USE OPTION I FOR PROJECTS APPROVED IN PRIORITY PROJECT LISTS (PPLs) 5**
27 **AND 6 AND USE OPTION II FOR PROJECTS APPROVED IN PRIORITY PROJECT**
28 **LIST 8]**

29
30 **OPTION I**

31
32 d. The Government shall pay 90 percent of the total first costs of the Project through a
33 combination of cash and the provision of all lands, easements, servitudes, rights-of-way, including
34 suitable borrow and dredged or excavated material disposal areas, and accomplishment or assurance of
35 accomplishment of all relocations determined by the Government to be necessary for construction,
36 monitoring, operation and maintenance of the Project, except for those lands, easements, servitudes,
37 rights-of-way, suitable borrow and dredged or excavated material disposal areas provided pursuant to
38 subparagraph e.2. of this Article and Article III.b. of this Agreement.

39
40 e. The State shall contribute, during the period of construction, 10 percent of the total first costs
41 through a combination of cash payments, lands, easements, servitudes, rights-of way, and work-in-kind,
42 as hereby specified and as further specified in Article III.b. and Article VI. of this Agreement.

1 1. As further specified in Article VI hereof, during the period of construction, the State
2 shall provide a cash contribution equal to 5 percent of the total first costs.

3
4 2. As further specified in Article III hereof, the State shall, prior to the scheduled date
5 for issuance of the solicitation for any construction contract, provide all lands, easements, servitudes,
6 rights-of-way, including suitable borrow and dredged or excavated material disposal areas to the
7 Government in, over, under and upon any lands, waterbodies, and/or waterbottoms deemed by the
8 Government, in formal consultation with the State, to be necessary for the construction, of the Project,
9 which are owned, controlled and/or claimed by the State, provided however, that the final designation
10 of the necessary lands, easements, servitudes, rights-of-way, including suitable borrow and dredged or
11 excavated material disposal areas in, over, under and upon any lands, waterbodies, and waterbottoms,
12 shall be exclusively within control of the District Engineer.

13
14 3. If the value of the contributions provided under subparagraphs e.1. and e.2. of this
15 Article is less than 10 percent of total first costs, the State shall provide, during the period of
16 construction, additional cash contributions in the amount necessary to make the State's total contribution
17 equal to 10 percent of total first costs.

18
19 4. The State shall implement and perform Project pre-construction and construction
20 monitoring in accordance with the Project Monitoring Plan and may perform other work-in-kind upon
21 approval of the Government. The State shall receive a credit for the value of work-in-kind as approved
22 by the Government, subject to Government audit, toward the cash contribution required under
23 subparagraph e.3. of this Article.

24
25 f. The State may request the Government to provide lands, easements, servitudes, rights-of-
26 way, and suitable borrow and dredged or excavated material disposal areas, which are owned,
27 controlled and/or claimed by the State on behalf of the State. Such requests shall be in writing and shall
28 describe the services requested to be performed. If in its sole discretion the Government elects to
29 perform the requested services or any portion thereof, it shall so notify the State in a writing that sets
30 forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of
31 conflict between such a writing and this Agreement, this Agreement shall control. If the State accepts
32 the terms and conditions, including estimated costs, the Government shall proceed to accomplish the
33 requested services. The State shall be solely responsible for all costs of the requested services and shall
34 pay all such costs in accordance with Article VI.c. of this Agreement. Notwithstanding the provision of
35 lands, easements, servitudes, rights-of-way, and suitable borrow and dredged or excavated material
36 disposal areas, which are owned, controlled and/or claimed by the State, the State shall be responsible,
37 as between the Government and the State, for the costs of cleanup and response upon said lands in
38 accordance with Article XVI.c. of this Agreement.

39
40 g. It is anticipated that the State will perform all operation, maintenance, repair, replacement,
41 rehabilitation and post-construction monitoring associated with this Project. During the life of the
42 Project, upon receipt of requests from the State, the Government shall, subject to the availability of
43 Government funding and subject to Government audit, reimburse the State 90 percent of the State's
44 actual operation, maintenance, repair, replacement, rehabilitation and monitoring costs, as approved by

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1 the Government, less a credit for any Government costs related to such activities. In the event the
2 Government performs any operation, maintenance, repair, replacement, rehabilitation, and post-
3 construction monitoring work on the Project, the Government shall receive a credit for such work in the
4 amount equal to the actual reasonable costs incurred which shall be applied against the Government's
5 requirement to pay 90 percent of the operation, maintenance, repair, replacement, rehabilitation, and
6 post-construction monitoring costs.

7
8 h. No Federal funds may be used to meet the State's share of total project costs under this
9 Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing
10 by the granting Federal agency.

11
12 i. Notwithstanding any other provision of this Agreement to the contrary, in the event that, on or
13 after December 1, 1997, the Secretary of the Army, the Director of the United States Fish and Wildlife
14 Service and the Administrator of the Environmental Protection Agency, jointly determine, pursuant to
15 the provisions of Section 303(f)(2) of the CWPPRA, as amended, that the State of Louisiana is not
16 taking reasonable steps to implement and administer the Louisiana Coastal Wetlands Conservation Plan,
17 amounts made available by the Government in accordance with Section 306 of the CWPPRA, as
18 amended, shall revert from 90 percent to 75 percent of the cost of the project, including both the
19 monitoring and operations and maintenance phases, and the State's share of the costs of the project
20 shall revert from 10 percent to 25 percent of the costs of the project, including both the monitoring and
21 operations and maintenance phases; provided however, that such reversion to the Government's lower
22 cost share level shall not occur until the Governor of the State of Louisiana has been provided notice of,
23 and opportunity for hearing on, any such determination by the Secretary, the Director and the
24 Administrator, and the State has been given ninety days from such notice or hearing to take corrective
25 action. The decreased Federal share shall apply and extend solely to those funds expended on or after
26 such ninety-day period has elapsed without corrective action having been taken by the State.

27
28 **[OPTION II]**

29
30 d. The Government shall pay 85 percent of the total first costs of the Project through a
31 combination of cash and the provision of all lands, easements, servitudes, rights-of-way, including
32 suitable borrow and dredged or excavated material disposal areas, and accomplishment or assurance of
33 accomplishment of all relocations determined by the Government to be necessary for construction,
34 monitoring, operation and maintenance of the Project, except for those lands, easements, servitudes,
35 rights-of-way, suitable borrow and dredged or excavated material disposal areas provided pursuant to
36 subparagraph e.2. of this Article and Article III.b. of this Agreement.

37
38 e. The State shall contribute, during the period of construction, 15 percent of the total first costs
39 through a combination of cash payments, lands, easements, servitudes, rights-of way, and work-in-kind,
40 as hereby specified and as further specified in Article III.b. and Article VI. of this Agreement.

41
42 1. As further specified in Article VI hereof, during the period of construction, the State
43 shall provide a cash contribution equal to 5 percent of the total first costs.

1 2. As further specified in Article III hereof, the State shall, prior to the scheduled date
2 for issuance of the solicitation for any construction contract, provide all lands, easements, servitudes,
3 rights-of-way, including suitable borrow and dredged or excavated material disposal areas to the
4 Government in, over, under and upon any lands, waterbodies, and/or waterbottoms deemed by the
5 Government, in formal consultation with the State, to be necessary for the construction, of the Project,
6 which are owned, controlled and/or claimed by the State, provided however, that the final designation
7 of the necessary lands, easements, servitudes, rights-of-way, including suitable borrow and dredged or
8 excavated material disposal areas in, over, under and upon any lands, waterbodies, and waterbottoms,
9 shall be exclusively within control of the District Engineer.

10
11 3. If the value of the contributions provided under subparagraphs e.1. and e.2. of this
12 Article is less than 15 percent of total first costs, the State shall provide, during the period of
13 construction, additional cash contributions in the amount necessary to make the State's total contribution
14 equal to 15 percent of total first costs.

15
16 4. The State shall implement and perform Project pre-construction and construction
17 monitoring in accordance with the Project Monitoring Plan and may perform other work-in-kind upon
18 approval of the Government. The State shall receive a credit for the value of work-in-kind as approved
19 by the Government, subject to Government audit, toward the cash contribution required under
20 subparagraph e.3. of this Article.

21
22 f. The State may request the Government to provide lands, easements, servitudes, rights-of-
23 way, and suitable borrow and dredged or excavated material disposal areas, which are owned,
24 controlled and/or claimed by the State on behalf of the State. Such requests shall be in writing and shall
25 describe the services requested to be performed. If in its sole discretion the Government elects to
26 perform the requested services or any portion thereof, it shall so notify the State in a writing that sets
27 forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of
28 conflict between such a writing and this Agreement, this Agreement shall control. If the State accepts
29 the terms and conditions, including estimated costs, the Government shall proceed to accomplish the
30 requested services. The State shall be solely responsible for all costs of the requested services and shall
31 pay all such costs in accordance with Article VI.c. of this Agreement. Notwithstanding the provision of
32 lands, easements, servitudes, rights-of-way, and suitable borrow and dredged or excavated material
33 disposal areas, which are owned, controlled and/or claimed by the State, the State shall be responsible,
34 as between the Government and the State, for the costs of cleanup and response upon said lands in
35 accordance with Article XVI.c. of this Agreement.

36
37 g. It is anticipated that the State will perform all operation, maintenance, repair, replacement,
38 rehabilitation and post-construction monitoring associated with this Project. During the life of the
39 Project, upon receipt of requests from the State, the Government shall, subject to the availability of
40 Government funding and subject to Government audit, reimburse the State 85 percent of the State's
41 actual operation, maintenance, repair, replacement, rehabilitation and monitoring costs, as approved by
42 the Government, less a credit for any Government costs related to such activities. In the event the
43 Government performs any operation, maintenance, repair, replacement, rehabilitation, and post-
44 construction monitoring work on the Project, the Government shall receive a credit for such work in the

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1 amount equal to the actual reasonable costs incurred which shall be applied against the Government's
2 requirement to pay 85 percent of the operation, maintenance, repair, replacement, rehabilitation, and
3 post-construction monitoring costs.
4

5 h. No Federal funds may be used to meet the State's share of total project costs under this
6 Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing
7 by the granting Federal agency.
8

9 i. Notwithstanding any other provision of this Agreement to the contrary, in the event that, on or
10 after December 1, 1997, the Secretary of the Army, the Director of the United States Fish and Wildlife
11 Service and the Administrator of the Environmental Protection Agency, jointly determine, pursuant to
12 the provisions of Section 303(f)(2) of the CWPPRA, as amended, that the State of Louisiana is not
13 taking reasonable steps to implement and administer the Louisiana Coastal Wetlands Conservation Plan,
14 amounts made available by the Government in accordance with Section 306 of the CWPPRA, as
15 amended, shall revert from 85 percent to 75 percent of the cost of the project, including both the
16 monitoring and operations and maintenance phases, and the State's share of the costs of the project
17 shall revert from 15 percent to 25 percent of the costs of the project, including both the monitoring and
18 operations and maintenance phases; provided however, that such reversion to the Government's lower
19 cost share level shall not occur until the Governor of the State of Louisiana has been provided notice of,
20 and opportunity for hearing on, any such determination by the Secretary, the Director and the
21 Administrator, and the State has been given ninety days from such notice or hearing to take corrective
22 action. The decreased Federal share shall apply and extend solely to those funds expended on or after
23 such ninety-day period has elapsed without corrective action having been taken by the State.
24

25 **[END OF OPTIONS]**
26
27

28 **ARTICLE III - LANDS, RELOCATIONS AND Pub. L. 91-646**

29

30 a. The Government shall acquire all lands, easements, servitudes, and rights-of-way, including
31 suitable dredged or excavated material disposal areas, determined by the Government to be necessary
32 for construction, operation and maintenance of the Project, except as provided in subparagraph b. of
33 this Article.
34

35 b. Prior to the scheduled date for issuance of the solicitation for any construction contract, the
36 State shall provide all lands, easements, servitudes, rights-of-way, dredged material disposal areas and
37 any other interests in, over, under and upon any lands, waterbodies, and/or waterbottoms deemed by
38 the Government, after formal consultation with the State, to be necessary for the construction, operation
39 and maintenance of the Project, which are owned, controlled and/or claimed by the State, provided
40 however, that the final designation of the necessary lands, easements, servitudes, rights-of-way,
41 including suitable borrow and dredged or excavated material disposal areas in, over, under and upon
42 any lands, waterbodies, and waterbottoms, shall be exclusively within control of the District Engineer.
43 The State shall provide the Government with evidence supporting the State's legal authority to grant the
44 Government an interest in such lands.

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1
2 c. It is specifically understood that no fee title to the property or minerals affected herein are
3 transferred with any easements, servitudes, rights-of-way, and suitable borrow and dredged or
4 excavated material disposal areas provided by the State pursuant to this Agreement. No public rights of
5 ownership shall be transferred and vest in private parties as a result of the Project except as provided
6 for explicitly in the State constitution or other State laws which govern local sponsor's acquisition and
7 negotiation of said rights; provided, however, that any such transfer or vesting or rights of ownership,
8 including mineral rights, in private parties pursuant to the State constitution or other State laws shall be
9 made subject to such terms and conditions which establish, preserve, and protect the right of the
10 Government and of the State to construct, operate, maintain, replace, repair and rehabilitate the Project
11 to the extent deemed necessary by the Government. It is further understood and agreed that any
12 easements, servitudes, rights-of-way, and suitable borrow and dredged or excavated material disposal
13 areas shall provide for access for mineral exploration and development which will not unreasonably
14 interfere with the purposes of the Project.
15

16 d. The Government shall accomplish or assure accomplishment of all relocations that are
17 deemed necessary by the Government for the construction, operation and maintenance of the Project.
18

19 e. After execution of this Agreement, the Government or the State, as the case may be, shall
20 comply with the applicable provisions of the Uniform Relocation Assistance and Real Property
21 Acquisition Policies Act of 1970, Pub. L. 91-646, as amended by Title IV of the Surface
22 Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17), and the Uniform
23 Regulations contained in 49 CFR Part 24, in acquiring lands, easements, servitudes, and rights-of-way
24 for construction and subsequent operation and maintenance of the Project, and inform all affected
25 persons of applicable benefits, policies, and procedures in connection with said Act.
26

27 f. Eminent Domain. The Government will coordinate its acquisition efforts with the State.
28 Condemnation will only be initiated by the Government when necessary, as in cases where the State is
29 not empowered to acquire a real property interest under State law or where agreement cannot be
30 reached on the purchase price. The Government will make every reasonable effort to resolve
31 disagreements on price without condemnation. The Government will inform the State of acquisitions
32 requiring condemnation for price or title prior to initiating condemnation proceedings.
33

34 g. If after construction of the Project, it is determined that additional property should have been
35 acquired or additional facilities or utilities relocated for the construction, operation and maintenance of
36 the Project, beyond that initially determined by the Government to be necessary for construction,
37 operation and maintenance of the Project, all cost to acquire the additional property or to accomplish
38 the additional relocations, through direct purchase, eminent domain or involuntary acquisition, will be
39 included as part of the total first costs of the Project.
40

41 **ARTICLE IV - VALUE OF LANDS AND FACILITIES**

42
43

1 a. The State shall not receive any credit for lands, easements, servitudes, and rights-of-way,
2 including borrow or dredged or excavated material disposal areas, previously provided as an item of
3 cooperation for another Federal project nor shall the value thereof be included in total project costs.
4 The value of the lands, easements, servitudes, and rights-of-way, including suitable borrow or dredged
5 or excavated material disposal areas, to be included in total first costs and credited towards the
6 Government and State's share of total first costs shall be determined in accordance with the following
7 procedures:

8 1. If the lands, easements, servitudes, or rights-of-way, including suitable borrow and
9 dredged or excavated material disposal areas and any other interests in, over, under and upon any
10 lands, waterbodies, and/or waterbottoms which are owned by the State as of the date the first
11 construction contract for the Project is awarded, the State shall be given a credit equal to the fair market
12 value of the interest at the time of such award or in exceptional circumstances, upon request of the State
13 and in the sole discretion of the Government, the actual purchase price paid by the State. The fair
14 market value shall be determined by an appraisal, to be obtained by the State, which has been prepared
15 by a qualified appraiser who is acceptable to both the State and the Government. The appraisal shall be
16 reviewed and approved by the State and the Government.

17
18 2. The value of lands, easements, servitudes, or rights-of-way, including suitable
19 borrow and dredged or excavated material disposal areas, acquired by the Government shall be the
20 actual costs of the land, including, but not limited to the actual incidental costs of acquiring the land, e.g.,
21 closing and title costs, appraisal costs, survey costs, attorney's fees, court costs, plat maps and mapping
22 costs, as well as the actual amounts expended for any Pub. L. 91-646 relocation assistance benefits
23 made in accordance with Article III., and all Government administrative costs in the land acquisition for
24 the Project.

25
26 3. If the State acquires a greater real estate interest in the lands, easements, servitudes,
27 or rights-of-way than are necessary for Project purposes, as determined by the Government, then only
28 the value of such portions of those acquisitions as are necessary for Project purposes shall be included
29 in total first costs and credited towards the State's share.

30
31 4. Credit for lands, easements, servitudes and rights-of-way acquired through eminent
32 domain proceedings occurring after the date of this Agreement will be based on court awards for the
33 real property interests taken, or on stipulated settlements or portions of stipulated settlements that have
34 received written Government approval. The fair market value for the purposes of filing an eminent
35 domain proceeding in court shall be based on an appraisal prepared by a qualified appraiser who is
36 acceptable to both the State and the Government and approved by the Government and the State.
37 Appraisals shall be done in accordance with the Federal Rules of Compensation.

38
39 5. Credit for lands, easements, servitudes, or rights-of-way acquired by the State
40 preceding the date of this Agreement, or at any time after this Agreement is signed, will also include the
41 reasonable documented incidental costs of acquiring the interest, e.g., closing and title costs, appraisal
42 costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts
43 expended for payment of any Pub. L. 91-646 relocation assistance benefits provided in accordance
44 with the obligations under this Agreement.

1
2 6. Credit will be allowed for the value of severance fees applied to dredging State
3 waterbottoms.
4

5 b. The costs of relocations which will be included in total first costs shall be that portion of the
6 actual costs as set forth below, and approved by the Government:
7

8 1. Highways and Highway Bridges: Only that portion of the cost as would be
9 necessary to construct substitute bridges and highways to the design standard that the State of Louisiana
10 would use in constructing a new bridge or highway under similar conditions of geography and traffic
11 loads.
12

13 2. Utilities and Facilities: Actual relocation costs, less depreciation, less salvage value,
14 plus the cost of removal, less the cost of betterments. With respect to betterments, new materials shall
15 not be used in any alteration or relocation if materials of value and usability equal to those in the existing
16 facility are available or can be obtained as salvage from the existing facility or otherwise, unless the
17 provision of new material is more economical. If, despite the availability of used material, new material
18 is used, where the use of such new material represents an additional cost, such cost will not be included
19 in total first costs.
20

21 **ARTICLE V -PROJECT COORDINATION TEAM**

22

23
24 a. To provide for consistent and effective communication, the State and the Government, not
25 later than 30 days after the effective date of this Agreement, shall appoint named senior representatives
26 to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until
27 the end of the period of construction. The Government's Project Manager and a counterpart named by
28 the State shall co-chair the Project Coordination Team.
29

30 b. The Government's Project Manager and the State's counterpart shall keep the Project
31 Coordination Team informed of the progress of construction and of significant pending issues and
32 actions, and shall seek the views of the Project Coordination Team on matters that the Project
33 Coordination Team generally oversees.
34

35 c. Until the end of the period of construction, the Project Coordination Team shall generally
36 oversee the Project, including issues related to design; plans and specifications; scheduling; real property
37 and relocation requirements; real property acquisition; contract awards and modifications; contract
38 costs; the Government's cost projections; final inspection of the entire Project or functional portions of
39 the Project; preparation of the proposed Project Operations and Schedule Manual; anticipated
40 requirements and needed capabilities for performance of operation, maintenance, repair, replacement,
41 and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a
42 Project Management Plan developed by the Government after consultation with the State.
43

1 d. The Project Coordination Team may make recommendations that it deems warranted to the
2 District Engineer on matters that the Project Coordination Team generally oversees, including
3 suggestions to avoid potential sources of dispute. The Government in good faith shall consider the
4 recommendations of the Project Coordination Team. The Government, having the legal authority and
5 responsibility for construction of the Project, has the discretion to accept, reject, or modify the Project
6 Coordination Team's recommendations.

7
8 e. The costs of participation in the Project Coordination Team shall be included in total first
9 costs and cost shared in accordance with the provisions of this Agreement.

10 **ARTICLE VI - METHOD OF PAYMENT**

11
12 **[USE OPTION I FOR PROJECTS APPROVED IN PRIORITY PROJECT LISTS (PPLs) 5**
13 **AND 6 AND USE OPTION II FOR PROJECTS APPROVED IN PRIORITY PROJECT**
14 **LIST 8]**

15 **OPTION I**

16
17 a. The Government shall maintain current records of contributions provided by the parties and
18 current projections of total first costs, total project costs, and costs due to betterments. By January 1st
19 of each year and at least quarterly thereafter, the Government shall provide the State with a report
20 setting forth all contributions provided to date and the current projections of total first costs; of total
21 project costs; of total costs due to betterments; of the maximum amount of total project costs
22 determined in accordance with Article XX of this Agreement; of the components of total first costs and
23 total project costs; of each party's share of total first costs and total project costs; of the State's total
24 cash contributions required in accordance with Articles II.b., II.e., and II.f. of this Agreement; of the
25 non-Federal proportionate share, and of the funds the Government projects to be required from the
26 State for the upcoming fiscal year. On the effective date of this Agreement, total project costs are
27 estimated to be \$_____.00, and the State's share of the total project costs is estimated to
28 be \$_____.00. Provided however, that should the State's share of total project costs
29 and/or total first costs revert from 10 percent to 25 percent in accordance with Article II.i. of this
30 Agreement, the State's share of the total project costs and/or total first costs shall be revised
31 accordingly). The total first costs are estimated to be \$_____.00, and the State's cash
32 contribution required under Article II.b., e. and f. of this Agreement is estimated to be \$
33 _____.00. Such amounts are estimates subject to adjustment by the Government and are not to
34 be construed as the total financial responsibilities of the Government and the State. From time to time,
35 increases and decreases to the total first costs and/or the total project costs will be identified and
36 incorporated into this Agreement when both parties execute a Schedule And Cost Change Request
37 (SACCR) for the Project. All SACCRs related to this Agreement must be reviewed and approved by
38 the Louisiana Division of Administration, or an authorized representative, prior to its execution by the
39 State. To meet its share of the total first cost, the State shall provide during the period of construction,
40 as specified in Article II.e. of this Agreement, a cash contribution of not less than 5 percent of the total
41 first costs.

42 **OPTION II**

43 **CSA: CWPPRA [FULL NAME OF PROJECT] PROJECT**

1
2 a. The Government shall maintain current records of contributions provided by the parties and
3 current projections of total first costs, total project costs, and costs due to betterments. By January 1st
4 of each year and at least quarterly thereafter, the Government shall provide the State with a report
5 setting forth all contributions provided to date and the current projections of total first costs; of total
6 project costs; of total costs due to betterments; of the maximum amount of total project costs
7 determined in accordance with Article XX of this Agreement; of the components of total first costs and
8 total project costs; of each party's share of total first costs and total project costs; of the State's total
9 cash contributions required in accordance with Articles II.b., II.e., and II.f. of this Agreement; of the
10 non-Federal proportionate share, and of the funds the Government projects to be required from the
11 State for the upcoming fiscal year. On the effective date of this Agreement, total project costs are
12 estimated to be \$_____.00, and the State's share of the total project costs is estimated to
13 be \$_____.00. Provided however, that should the State's share of total project costs
14 and/or total first costs revert from 15 percent to 25 percent in accordance with Article II.i. of this
15 Agreement, the State's share of the total project costs and/or total first costs shall be revised
16 accordingly). The total first costs are estimated to be \$ _____.00, and the State's cash
17 contribution required under Article II.b., e. and f. of this Agreement is estimated to be \$
18 _____.00. Such amounts are estimates subject to adjustment by the Government and are not to
19 be construed as the total financial responsibilities of the Government and the State. From time to time,
20 increases and decreases to the total first costs and/or the total project costs will be identified and
21 incorporated into this Agreement when both parties execute a Schedule And Cost Change Request
22 (SACCR) for the Project. All SACCRs related to this Agreement must be reviewed and approved by
23 the Louisiana Division of Administration, or an authorized representative, prior to its execution by the
24 State. To meet its share of the total first cost, the State shall provide during the period of construction,
25 as specified in Article II.e. of this Agreement, a cash contribution of not less than 5 percent of the total
26 first costs.

27
28 **[END OF OPTIONS]**
29

30 b. The State shall provide the cash contribution required under Articles II.e.1. and II.e.3. of this
31 Agreement in accordance with the provisions of this paragraph.
32

33 1. Not less than 60 calendar days prior to the scheduled date for issuance of the
34 solicitation for the first construction contract, the Government shall notify the State in writing of such
35 scheduled date and the funds the Government determines to be required from the State to meet the non-
36 Federal proportionate share of projected financial obligations for total first costs through the first fiscal
37 year of construction, including the non-Federal proportionate share of financial obligations for total first
38 costs incurred prior to the commencement of the period of construction. Not later than such scheduled
39 date, the State shall verify to the satisfaction of the Government that the State has deposited the required
40 funds in an escrow or other account acceptable to the Government, with interest accruing to the State or
41 provide an Electronic Funds Transfer in accordance with procedures established by the Government.
42

43 2. For the second and subsequent fiscal years of construction, the Government shall
44 notify the State in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the

CSA: CWPPRA [FULL NAME OF PROJECT] PROJECT

1 funds the Government determines to be required from the State to meet the non-Federal proportionate
2 share of projected financial obligations for total first costs for that fiscal year. No later than 30 calendar
3 days prior to the beginning of the fiscal year, the State shall make the full amount of the required funds
4 for that fiscal year available to the Government through any of the funding mechanisms specified in
5 Article VI.b.1. of this Agreement.

6
7 3. The Government shall draw from the funds provided by the State such sums as the
8 Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations
9 for total first costs incurred prior to the commencement of the period of construction; and (b) the non-
10 Federal proportionate share of financial obligations for total first costs as they are incurred during the
11 period of construction.

12
13 4. If at any time during the period of construction the Government determines that
14 additional funds will be needed from the State to cover the non-Federal proportionate share of
15 projected financial obligations for total first costs for the current fiscal year, the Government shall notify
16 the State in writing of the additional funds required, and the State, no later than 60 calendar days from
17 receipt of such notice, shall make the additional required funds available through any of the funding
18 mechanisms specified in Article VI.b.1. of this Agreement.

19
20 c. In advance of the Government incurring any financial obligation associated with additional
21 work under Article II.b. or II.f. of this Agreement, the State shall verify to the satisfaction of the
22 Government that the State has deposited the full amount of the funds required to pay for such additional
23 work in an escrow or other account acceptable to the Government, with interest accruing to the State.
24 The Government shall draw from the funds provided by the State such sums as the Government deems
25 necessary to cover the Government's financial obligations for such additional work as they are incurred.
26 In the event the Government determines that the State must provide additional funds to meet its cash
27 contribution, the Government shall notify the State in writing of the additional funds required. Within 30
28 calendar days thereafter, the State shall make the additional required funds available to the Government
29 through any of the funding mechanisms specified in Article VI.b.1. of this Agreement .

30
31 **[USE OPTION I FOR PROJECTS APPROVED IN PRIORITY PROJECT LISTS (PPLs) 5**
32 **AND 6 AND USE OPTION II FOR PROJECTS APPROVED IN PRIORITY PROJECT**
33 **LIST 8]**

34
35 **OPTION I**

36 d. Upon completion of the period of construction and resolution of all relevant contract claims
37 and appeals, the Government shall compute the total first costs and tender to the State a final accounting
38 of the State's share of total first costs.

39
40 1. In the event the total contribution by the State is less than the State's required share
41 of total first costs, the State shall, no later than 90 calendar days after receipt of written notice, make the
42 additional required funds available to the Government through any of the funding mechanisms specified
43 in Article VI.b.1. of this Agreement.

2. If the value of the State's total contribution under Article II.e. of this Agreement exceeds 10 percent of total first costs, the Government shall, subject to the availability of funds, return the excess to the State no later than 90 calendar days after the final accounting of the State's share of total first costs is complete.

e. Not later than October 1 of each fiscal year during the life of the Project, the State, in consultation with the Government, shall prepare a yearly estimate for the anticipated operation, maintenance, repair, replacement, rehabilitation and monitoring costs, by activity or item, for the fiscal year that will begin 12 months thereafter. The District Engineer will review and verify the accuracy of said estimate. For the first year of Project operation, maintenance, repair, replacement, rehabilitation and monitoring after the period of construction, the said estimate shall include operation, maintenance, repair, replacement, rehabilitation and monitoring costs that will have been incurred during the period of construction.

f. On a quarterly basis during the life of the Project, the State shall submit to the Government statements of actual operation, maintenance, repair, replacement, rehabilitation and monitoring costs incurred by the State for the Project or functional portion, including costs incurred by the State and the Government for the development and coordination of the Project Monitoring Plan and the Project Operations and Schedule Manual, and not later than 30 days thereafter the Government, subject to availability of funds and subject to audit, shall provide to the State a cash payment equal to 90 percent of said actual costs as approved by the Government less a credit for any Government costs related to such activities. In the event the Government performs any operation, maintenance, repair, replacement, rehabilitation, and post-construction monitoring work on the Project, the Government shall receive a credit for such work in the amount equal to the actual reasonable costs incurred which shall be applied against the Government's requirement to pay 90 percent of the total operation, maintenance, repair, replacement, rehabilitation, and post-construction monitoring costs, including costs incurred by the Government and the State for the development and coordination of the Project Monitoring Plan and the Project Operations and Schedule Manual.

[OPTION II]

d. Upon completion of the period of construction and resolution of all relevant contract claims and appeals, the Government shall compute the total first costs and tender to the State a final accounting of the State's share of total first costs.

1. In the event the total contribution by the State is less than the State's required share of total first costs, the State shall, no later than 90 calendar days after receipt of written notice, make the additional required funds available to the Government through any of the funding mechanisms specified in Article VI.b.1. of this Agreement.

2. If the value of the State's total contribution under Article II.e. of this Agreement exceeds 15 percent of total first costs, the Government shall, subject to the availability of funds, return the excess to the State no later than 90 calendar days after the final accounting of the State's share of total first costs is complete.

1
2 e. Not later than October 1 of each fiscal year during the life of the Project, the State, in
3 consultation with the Government, shall prepare a yearly estimate for the anticipated operation,
4 maintenance, repair, replacement, rehabilitation and monitoring costs, by activity or item, for the fiscal
5 year that will begin 12 months thereafter. The District Engineer will review and verify the accuracy of
6 said estimate. For the first year of Project operation, maintenance, repair, replacement, rehabilitation
7 and monitoring after the period of construction, the said estimate shall include operation, maintenance,
8 repair, replacement, rehabilitation and monitoring costs that will have been incurred during the period of
9 construction.

10
11 f. On a quarterly basis during the life of the Project, the State shall submit to the Government
12 statements of actual operation, maintenance, repair, replacement, rehabilitation and monitoring costs
13 incurred by the State for the Project or functional portion, including costs incurred by the State and the
14 Government for the development and coordination of the Project Monitoring Plan and the Project
15 Operations and Schedule Manual, and not later than 30 days thereafter the Government, subject to
16 availability of funds and subject to audit, shall provide to the State a cash payment equal to 85 percent
17 of said actual costs as approved by the Government less a credit for any Government costs related to
18 such activities. In the event the Government performs any operation, maintenance, repair, replacement,
19 rehabilitation, and post-construction monitoring work on the Project, the Government shall receive a
20 credit for such work in the amount equal to the actual reasonable costs incurred which shall be applied
21 against the Government's requirement to pay 85 percent of the total operation, maintenance, repair,
22 replacement, rehabilitation, and post-construction monitoring costs, including costs incurred by the
23 Government and the State for the development and coordination of the Project Monitoring Plan and the
24 Project Operations and Schedule Manual.

25
26 **[END OF OPTIONS]**

27
28 g. During the period of construction and for the life of the Project, the Government shall
29 provide quarterly financial reports on the status of total project costs and status of contributions made
30 by the State and the Government. Upon completion of the Project or termination of this Agreement,
31 and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting
32 and furnish the State with the results of the final accounting. The final accounting shall determine total
33 project costs, each party's contribution provided thereto, and each party's required share thereof. The
34 final accounting also shall determine costs due to betterments and the State's cash contribution provided
35 pursuant to Article II.b. of this Agreement.

36
37 1. In the event the final accounting shows that the total contribution provided by the
38 State is less than its required share of total project costs, plus costs due to any betterments provided in
39 accordance with Article II.b. of this Agreement, the State shall, no later than 90 calendar days after
40 receipt of written notice, make whatever sum is required to meet the State's required share of total
41 project costs plus costs due to any betterments provided in accordance with Article II.b. of this
42 Agreement available to the Government through any of the funding mechanisms specified in Article
43 VI.b.1. of this Agreement.
44

1 2. In the event the final accounting shows that the total contribution provided by the
2 State exceeds its required share of total project costs plus costs due to any betterments provided in
3 accordance with Article II.b. of this Agreement, the Government shall, subject to the availability of
4 funds, refund the excess to the State no later than 90 calendar days after the final accounting is
5 complete; however, the State shall not be entitled to any refund of the 5 percent cash contribution
6 required pursuant to Article II.e.1. of this Agreement. In the event existing funds are not available to
7 refund the excess to the State, the Government shall seek such appropriations as are necessary to make
8 the refund.

9
10 h. The State shall request prior District Engineer approval of any item of operation,
11 maintenance, repair, replacement, rehabilitation or monitoring costs that exceeds the original estimate by
12 more than \$5,000.00. The District Engineer shall approve or disapprove the request within 45 days,
13 except that the District Engineer shall approve or disapprove the request within 5 days if the District
14 Engineer determines that an emergency exists.

15 16 17 **ARTICLE VII - DISPUTES**

18
19 Before any party brings suit for breach of this Agreement, that party must first notify the other
20 party in writing of the nature of the purported breach and seek in good faith to resolve the dispute
21 through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a
22 mutually acceptable method of non-binding alternative dispute resolution with a qualified third party
23 acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided
24 by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties
25 from performance pursuant to this Agreement.

26 27 28 **ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT,** 29 **REHABILITATION, AND MONITORING**

30
31 a. After the District Engineer has determined that construction of the Project or functional
32 portion of the Project is complete and provided the State with written notice of such determination, the
33 State shall operate, maintain, repair, replace, and rehabilitate the completed Project, or functional
34 portion of the Project, in accordance with applicable Federal and State laws as provided in Article X
35 and specific directions prescribed in accordance with the Project Operations and Schedule Manual and
36 any subsequent amendments thereto.

37
38 b. The State hereby gives the Government a right to enter, at reasonable times and in a
39 reasonable manner, upon land which the State owns or controls for access to the Project for the
40 purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing,
41 replacing, or rehabilitating the Project. If an inspection shows that the State for any reason is failing to
42 fulfill the State's obligations under this Agreement without receiving prior written approval from the
43 Government, the Government will send a written notice to the State. If after 30 calendar days from
44 receipt of notice, the State continues to fail to perform, then the Government shall have the right to enter,

1 at reasonable times and in a reasonable manner, upon lands the State owns or controls for access to the
2 Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the
3 Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the
4 Government shall operate to relieve the State of responsibility to meet the State obligations as set forth
5 in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to
6 assure faithful performance pursuant to this Agreement.

7
8 c. The State shall implement or assure implementation of post-construction monitoring in
9 accordance with the Project Monitoring Plan.

10
11 d. To provide for consistent and effective communication between the State and the
12 Government during the period of Project operation, the State and the Government shall appoint
13 representatives to coordinate on operation, maintenance, repair, replacement and rehabilitation costs,
14 and other matters relating to operation and maintenance of the Project. The State and the Government
15 will keep each other informed of any changes in cost estimates.

16 17 18 **ARTICLE IX - MAINTENANCE OF RECORDS AND AUDIT**

19
20 a. Not later than 60 calendar days after the effective date of this Agreement, the Government
21 and the State shall develop procedures for keeping books, records, documents, and other evidence
22 pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall
23 incorporate, and apply as appropriate, the standards for financial management systems set forth in the
24 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local
25 Governments at 32 C.F.R. Section 33.20. The Government and the State shall maintain such books,
26 records, documents, and other evidence in accordance with these procedures and for a minimum of
27 three years from the date that the Government provides the State with the results of the final accounting
28 referenced in Article VI.g. or three years after the resolution of all relevant claims arising from the results
29 of the Government's final accounting, whichever event occurs last. To the extent permitted under
30 applicable Federal laws and regulations, the Government and the State shall each allow the other to
31 inspect such books, documents, records, and other evidence.

32
33 b. Pursuant to 32 C.F.R. Section 33.26, the State is responsible for complying with the Single
34 Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and
35 Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of
36 the State and to the extent permitted under applicable Federal laws and regulations, the Government
37 shall provide to the State and independent auditors any information necessary to enable an audit of the
38 State's activities under this Agreement. The costs of any non-Federal audits performed in accordance
39 with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-
40 133, and such costs as are allocated to the Project shall be included as total first costs or total project
41 costs as defined in Article I.c. and cost shared in accordance with the provisions of this Agreement.

42
43 c. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition
44 to any audit that the State is required to conduct under the Single Audit Act. Any such Government

CSA: CWPPRA [FULL NAME OF PROJECT] PROJECT

audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included as total first costs or total project costs as defined in Article I.c. and cost shared in accordance with the provisions of this Agreement.

ARTICLE X -FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the State and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE XI - RELATIONSHIP OF PARTIES

The Government and the State act in an independent capacity in the performance of their respective functions under this Agreement, and neither is to be considered the officer, agent, or employee of the other.

ARTICLE XII - OFFICIALS NOT TO BENEFIT

No member of, or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XIII - COVENANT AGAINST CONTINGENT FEES

The State warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the State for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in its discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XIV - TERMINATION OR SUSPENSION

a. If at any time the State fails to make the payments required under this Agreement, the Assistant Secretary of the Army (Civil Works) may terminate or suspend work on the Project until the

CSA: CWPPRA [FULL NAME OF PROJECT] PROJECT

1 State is no longer in arrears, unless he/she determines that continuation of work on the Project is in the
2 interest of the United States or is necessary in order to satisfy agreements with any other non-Federal
3 interests in connection with the Project.
4

5 b. If the Government fails to receive annual appropriations in amounts sufficient to meet Project
6 expenditures for the then-current or upcoming fiscal year, the Government shall so notify the State in
7 writing, and 60 calendar days thereafter either party may elect without penalty to terminate this
8 Agreement or to suspend future performance under this Agreement. In the event that either party elects
9 to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall
10 remain in effect until such time as the Government receives sufficient appropriations or until either the
11 Government or the State elects to terminate this Agreement.
12

13 c. In the event that either party elects to terminate this Agreement pursuant to this Article or
14 Article XVI of this Agreement, both parties shall conclude their activities relating to the Project and
15 proceed to a final accounting in accordance with Article VI.g. of this Agreement.
16

17 d. Any termination of this Agreement or suspension of future performance under this
18 Agreement in accordance with this Article or Article XVI of this Agreement shall not relieve the parties
19 of liability for any obligation previously incurred.
20

21 **ARTICLE XV - OBLIGATIONS OF FUTURE APPROPRIATIONS**

22

23
24 Nothing herein shall constitute, nor be deemed to constitute, an obligation of future
25 appropriations by the Legislature of the State of Louisiana.
26

27 **ARTICLE XVI - HAZARDOUS SUBSTANCES**

28

29
30 a. After execution of this Agreement, the Government, upon formal consultation with the State,
31 shall perform, or cause to be performed, any investigations for hazardous substances that the
32 Government or the State determines to be necessary to identify the existence and extent of any
33 hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and
34 Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under
35 lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this
36 Agreement, to be required for the construction, operation, and maintenance of the Project. All actual
37 costs incurred by the State and the Government for such investigations for hazardous substances shall
38 be included in total first costs and cost shared in accordance with the provisions of this Agreement,
39 subject to an audit in accordance with Article IX.c. of this Agreement to determine reasonableness,
40 allocability, and allowability of costs. Not later than 60 days prior to the commencement of the
41 acquisition of real property for the Project, the Government shall provide a report of all findings from the
42 investigations for hazardous substances to the State for its review and comment. Not later than 45 days
43 after provision of said report, the State shall provide its comment to the Government. The failure to
44 provide comments in a timely manner shall be deemed to represent concurrence by the State with the

1 findings of the said report. Neither the Government nor the State shall proceed with acquisition of the
2 real property interests until both parties agree that the Government or State should proceed.
3

4 b. In the event it is discovered through any investigation for hazardous substances or other
5 means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements,
6 or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be
7 required for the construction, operation, and maintenance of the Project, the State and the Government
8 shall provide prompt written notice to each other, and neither the Government or the State shall
9 proceed with the acquisition of the real property interests until both parties agree that the Government or
10 the State should proceed.
11

12 c. The Government and the State shall determine whether to initiate construction of the Project,
13 or, if already in construction, whether to continue with work on the Project, suspend future performance
14 under this Agreement, or terminate this Agreement, in any case where hazardous substances regulated
15 under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the
16 Government determines, pursuant to Article III of this Agreement, to be required for the construction,
17 operation, and maintenance of the Project. Should the Government and the State determine to initiate
18 or continue with construction after considering any liability that may arise under CERCLA, the State
19 shall be responsible, as between the Government and the State, for the costs of clean-up and response
20 for those lands which are owned, controlled and/or claimed by the State, to include the costs of any
21 studies and investigations necessary to determine an appropriate response to the contamination. Such
22 costs shall not be considered a part of total first costs. For lands fee-owned by the Government, the
23 Government shall be responsible, as between the Government and the State, for the costs of clean-up
24 and response, to include the costs of any studies and investigations necessary to determine an
25 appropriate response to the contamination. Such costs shall not be considered a part of total first costs.
26 For all lands other than those owned, controlled and/or claimed by the State or fee-owned by the
27 Government, the costs of clean-up and response, to include the costs of any studies and investigations
28 necessary to determine an appropriate response to the contamination shall be considered a part of total
29 first costs and cost shared in accordance with the provisions of this Agreement, subject to an audit in
30 accordance with Article IX.c. of this Agreement to determine reasonableness, allocability, and
31 allowability of costs. In the event the State fails to provide any funds necessary to pay for clean-up and
32 response costs or to otherwise discharge the State's responsibilities under this paragraph upon direction
33 by the Government, the Government may, in its sole discretion, either terminate this Agreement for the
34 convenience of the Government, suspend future performance under this Agreement, or continue work
35 on the Project.
36

37 d. The State and the Government shall consult with each other in accordance with Article V of
38 this Agreement in an effort to ensure that responsible parties bear any necessary clean-up and response
39 costs as defined in CERCLA. Any decision made pursuant to paragraph c. of this Article shall not
40 relieve any party from any liability that may arise under CERCLA.
41

42 e. To the maximum extent practicable, the State shall operate, maintain, repair, replace, and
43 rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.
44

1
2 **ARTICLE XVII - NOTICES**
3

4 a. All notices, requests, demands, and other communications required or permitted to be given
5 under this Agreement shall be deemed to have been duly given if in writing and delivered personally,
6 given by prepaid telegram, or mailed by first-class (postage pre-paid), registered, or certified mail, as
7 follows:
8

9 If to the State:

10
11 Secretary, Department of Natural Resources
12 State of Louisiana
13 P.O. Box 94396
14 Baton Rouge, LA 70804-9396
15

16 If to the Government:

17
18 District Engineer
19 U. S. Army Corps of Engineers
20 ATTN: CEMVN-PM-C
21 P.O. Box 60267
22 New Orleans, LA 70160-0267
23

24 b. A party may change the address to which such communications are to be directed by giving
25 written notice to the other party in the manner provided in this Article.
26

27 c. Any notice, request, demand, or other communication made pursuant to this Article shall be
28 deemed to have been received by the addressee at such time as it is personally delivered or seven
29 calendar days after it is mailed, as the case may be.
30

31
32 **ARTICLE XVIII - CONFIDENTIALITY**
33

34 To the extent permitted by the laws governing each party, the parties agree to maintain the
35 confidentiality of exchanged information when requested to do so by the providing party.
36

37
38 **ARTICLE XIX - HISTORIC PRESERVATION**
39

40 a. The Government shall perform, or cause to be performed, a cultural resource investigation
41 for all lands, easements, servitudes, rights-of-way, including suitable borrow and dredged or excavated
42 material disposal areas, and any other interests in, over, under and upon any lands, waterbodies, and/or
43 waterbottoms deemed by the Government, in formal consultation with the State, to be necessary for the
44 construction, operation and maintenance of the Project, provided however, that the final designation of

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1 the necessary lands, easements, servitudes, rights-of-way, including suitable borrow and dredged or
2 excavated material disposal areas in, over, under and upon any lands, waterbodies, and waterbottoms,
3 shall be exclusively within control of the District Engineer. The costs of identification, survey and
4 evaluation of historic properties shall be included in total first costs and cost shared in accordance with
5 the provisions of this Agreement.

6
7 b. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs
8 of mitigation and data recovery activities associated with historic preservation shall be borne entirely by
9 the Government and shall not be included in total project costs, up to the statutory limit of one percent
10 of the total amount authorized to be appropriated for the Project.

11
12 c. The Government shall not incur costs for mitigation and data recovery that exceed the
13 statutory one percent limit specified in paragraph b. of this Article unless and until the Assistant
14 Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public
15 Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed
16 the one percent limit shall be included in total project costs.

17 18 19 **ARTICLE XX - PROJECT COST LIMITS**

20
21 **[USE OPTION I FOR PROJECTS APPROVED IN PRIORITY PROJECT LISTS (PPLs) 5**
22 **AND 6 AND USE OPTION II FOR PROJECTS APPROVED IN PRIORITY PROJECT**
23 **LIST 8]**

24 **OPTION I**

25
26 a. On the effective date of this Agreement, total project costs are estimated to be
27 \$_____.00, and the State's share of the total project costs is estimated to be
28 \$_____.00. As approved by the CWPPRA Task Force, the maximum total project costs
29 are \$_____.00, and the State's share of the maximum total project costs is \$_____.00
30 (provided however, that should the State's share of total project costs revert from 10 percent to 25
31 percent in accordance with Article II.i of this Agreement, the State's share of the total project costs shall
32 be revised accordingly). If at any time the total project costs exceeds the maximum total project costs
33 stated above, the award of any new contracts for the Project shall be deferred until such time as the
34 project overages are approved by the CWPPRA Task Force and a Schedule And Cost Change
35 Request for the Project is approved by the Government and the State. In the event the Project
36 overages are not approved by the CWPPRA Task Force and the State, then this Agreement shall be
37 terminated and the Government and the State shall proceed to a final accounting in accordance with
38 Article VI of this Agreement.

39 40 **OPTION II**

41
42 a. On the effective date of this Agreement, total project costs are estimated to be
43 \$_____.00, and the State's share of the total project costs is estimated to be
44 \$_____.00. As approved by the CWPPRA Task Force, the maximum total project costs

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are \$_____.00, and the State's share of the maximum total project costs is \$_____.00 (provided however, that should the State's share of total project costs revert from 15 percent to 25 percent in accordance with Article II.i of this Agreement, the State's share of the total project costs shall be revised accordingly). If at any time the total project costs exceeds the maximum total project costs stated above, the award of any new contracts for the Project shall be deferred until such time as the project overages are approved by the CWPPRA Task Force and a Schedule And Cost Change Request for the Project is approved by the Government and the State. In the event the project overages are not approved by the CWPPRA Task Force and the State, then this Agreement shall be terminated and the Government and the State shall proceed to a final accounting in accordance with Article VI of this Agreement.

[END OF OPTIONS]

b. Notwithstanding any provision of this Agreement, if at any time during the performance of a Project phase the estimate for that phase of the work exceeds 125 percent of the projected total costs for that phase of the work, no new contracts for the Project shall be awarded until such time as the Government and the State agree in writing to resume work on that or any other phase of the Project. The current estimate for the four phases of the Project implementation are as set below:

1. Engineering and Design Phase - \$_____.00.
2. Construction Phase (including Real Estate) - \$_____.00.
3. Monitoring Phase - \$_____.00.
4. Operations and Maintenance Phase - \$_____.00.
5. Current Total Project Costs - \$_____.00.

[End of Page]

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall
2 become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).
3

4
5 THE DEPARTMENT OF THE ARMY

THE STATE OF LOUISIANA

6
7 BY: _____

BY: _____

8 **[TYPED NAME]**

[TYPED NAME]

9 Assistant Secretary of the Army
10 (Civil Works)

Secretary
Louisiana Department of
Natural Resources

11
12
13 DATE: _____

DATE: _____

14
15
16
17 REVIEWED AND APPROVED BY:

18
19
20 _____
[TYPED NAME]

21 Director
22 Office of Contractual Review
23 Louisiana Division of Administration

24
25 DATE: _____
26

27
28 WITNESS:

29
30 _____

31
32
33
34 _____

35
36
37
38 _____

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the Department of Natural Resources for the State of Louisiana, that the Department of Natural Resources for the State of Louisiana is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the State of Louisiana in connection with the **[FULL NAME OF PROJECT]** Project, **[PARISH NAME]** Parish, Louisiana, and that the persons who have executed this Agreement on behalf of the State have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 20____.

[SIGNATURE]

General Counsel

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

DATE: _____

[TYPED NAME], Secretary
Department of Natural Resources
State of Louisiana

CERTIFICATION OF LEGAL REVIEW

The draft Cost Sharing Agreement for the construction of the **[FULL NAME OF PROJECT]** Project, **[PARISH NAME]** Parish, Louisiana, has been fully reviewed by the Office of the District Counsel, United States Army Engineer District, New Orleans, and is determined to be legally sufficient.

DATE

[TYPED NAME]
District Counsel